

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ERIK TIMOTHY MALAND
a.k.a. ERIK MALAND
657 Marshall Avenue
Saint Paul, MN 55104

Registered Nurse License No. 772782

Respondent

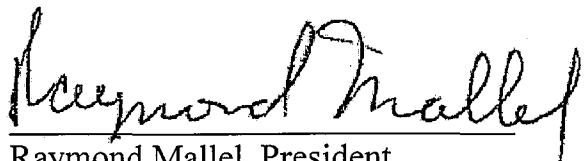
Case No. 2013-105

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **December 24, 2012.**

IT IS SO ORDERED **December 24, 2012.**



Raymond Malle, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 ADRIAN R. CONTRERAS
Deputy Attorney General
4 State Bar No. 267200
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2634
7 Facsimile: (619) 645-2061
E-mail: Adrian.Contreras@doj.ca.gov
8 *Attorneys for Complainant*

9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-105

13 **ERIK TIMOTHY MALAND,**
14 **AKA ERIK MALAND**
15 **657 Marshall Avenue**
Saint Paul, MN 55104

STIPULATED SURRENDER OF
LICENSE AND ORDER

16 **Registered Nurse License No. 772782**

17 Respondent.

18
19 In the interest of a prompt and speedy resolution of this matter, consistent with the public
20 interest and the responsibility of the Board of Registered Nursing of the Department of Consumer
21 Affairs the parties hereby agree to the following Stipulated Surrender of License and Order which
22 will be submitted to the Board for approval and adoption as the final disposition of the
23 Accusation.

24 **PARTIES**

25 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of
26 Registered Nursing. She brought this action solely in her official capacity and is represented in
27 this matter by Kamala D. Harris, Attorney General of the State of California, by Adrian R.
28 Contreras, Deputy Attorney General.

2. Erik Timothy Maland, aka Erik Maland (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about April 23, 2010, the Board of Registered Nursing issued Registered Nurse License No. 772782 to Erik Timothy Maland aka Erik Maland (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2013-105 and will expire on April 30, 2014, unless renewed.

JURISDICTION

4. Accusation No. 2013-105 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 8, 2012. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2013-105 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 2013-105. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

///

///

///

1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 2013-105, agrees that cause exists for discipline and hereby surrenders his Registered Nurse
4 License No. 772782 for the Board's formal acceptance.

5 9. Respondent understands that by signing this stipulation he enables the Board to issue
6 an order accepting the surrender of his Registered Nurse License without further process.

7 CONTINGENCY

8 10. This stipulation shall be subject to approval by the Board of Registered Nursing.
9 Respondent understands and agrees that counsel for Complainant and the staff of the Board of
10 Registered Nursing may communicate directly with the Board regarding this stipulation and
11 surrender, without notice to or participation by Respondent. By signing the stipulation,
12 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the
13 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
14 stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of
15 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
16 the parties, and the Board shall not be disqualified from further action by having considered this
17 matter.

18 11. The parties understand and agree that email and facsimile copies of this Stipulated
19 Surrender of License and Order, including email and facsimile signatures thereto, shall have the
20 same force and effect as the originals.

21 12. This Stipulated Surrender of License and Order is intended by the parties to be an
22 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
23 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
24 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
25 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
26 executed by an authorized representative of each of the parties.

27 13. In consideration of the foregoing admissions and stipulations, the parties agree that
28 the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 772782, issued to Respondent Erik Timothy Maland, aka Erik Maland, is surrendered and accepted by the Board of Registered Nursing.

1. The surrender of Respondent's Registered Nurse License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board of Registered Nursing.

2. Respondent shall lose all rights and privileges as a registered nurse in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 2013-105 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. If and when Respondent's license is reinstated, he shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$1,615.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.

6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 2013-105 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

3

4
5
6
7

10-15-12

9
10
11

12

13

14

10/16/12

15

16

16
17
18

19

20

21

24

Exhibit A

Accusation No. 2013-105

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
4 State Bar No. 101336
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3037
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2013-105**

13 **ERIK TIMOTHY MALAND;**
14 **AKA ERIK MALAND**
15 **657 Marshall Avenue**
Saint Paul, MN 55104

A C C U S A T I O N

16 **Registered Nurse License No. 772782**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Executive Officer of the Board of Registered Nursing, State of California.
23 2. On or about April 23, 2010, the Board of Registered Nursing issued Registered
24 Nurse License Number 772782 to Erik Timothy Maland, aka Erik Maland (Respondent). The
25 Registered Nurse License was in full force and effect at all times relevant to the charges brought
26 herein and will expire on April 30, 2014, unless renewed.

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480;
or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be

1 conclusive evidence of the fact that the conviction occurred, but only of that fact,
2 and the board may inquire into the circumstances surrounding the commission of
3 the crime in order to fix the degree of discipline or to determine if the conviction
is substantially related to the qualifications, functions, and duties of the licensee in
question.

4 As used in this section, "license" includes "certificate," "permit,"
5 "authority," and "registration."

6 9. Section 2761 of the Code states:

7 The board may take disciplinary action against a certified or licensed
8 nurse or deny an application for a certificate or license for any of the following:

9 (a) Unprofessional conduct, which includes, but is not limited to, the
following:

10

11 (f) Conviction of a felony or of any offense substantially related to the
12 qualifications, functions, and duties of a registered nurse, in which event the
record of the conviction shall be conclusive evidence thereof.

13

14 10. Section 2762 of the Code states:

15 In addition to other acts constituting unprofessional conduct within the
16 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct
for a person licensed under this chapter to do any of the following:

17

18 (b) Use any controlled substance as defined in Division 10 (commencing
19 with Section 11000) of the Health and Safety Code, or any dangerous drug or
dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or
20 in a manner dangerous or injurious to himself or herself, any other person, or the
public or to the extent that such use impairs his or her ability to conduct with safety
21 to the public the practice authorized by his or her license.

22 (c) Be convicted of a criminal offense involving the prescription,
consumption, or self-administration of any of the substances described in
23 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
record pertaining to, the substances described in subdivision (a) of this section, in
24 which event the record of the conviction is conclusive evidence thereof.

25

26 11. Section 2765 of the Code states:

27 A plea or verdict of guilty or a conviction following a plea of *nolo*
28 *contendere* made to a charge substantially related to the qualifications, functions
and duties of a registered nurse is deemed to be a conviction within the meaning

1 of this article. The board may order the license or certificate suspended or
2 revoked, or may decline to issue a license or certificate, when the time for appeal
3 has elapsed, or the judgment of conviction has been affirmed on appeal or when
4 an order granting probation is made suspending the imposition of sentence,
5 irrespective of a subsequent order under the provisions of Section 1203.4 of the
6 Penal Code allowing such person to withdraw his or her plea of guilty and to enter
7 a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
8 accusation, information or indictment.

9 **REGULATORY PROVISIONS**

10 12. California Code of Regulations, title 16, section 1444, states:

11 A conviction or act shall be considered to be substantially related to the
12 qualifications, functions or duties of a registered nurse if to a substantial degree it
13 evidences the present or potential unfitness of a registered nurse to practice in a
14 manner consistent with the public health, safety, or welfare. Such convictions or
15 acts shall include but not be limited to the following:

16 (a) Assaultive or abusive conduct including, but not limited to, those
17 violations listed in subdivision (d) of Penal Code Section 11160.

18 (b) Failure to comply with any mandatory reporting requirements.

19 (c) Theft, dishonesty, fraud, or deceit.

20 (d) Any conviction or act subject to an order of registration pursuant to
21 Section 290 of the Penal Code.

22 13. California Code of Regulations, title 16, section 1445 states:

23

24 (b) When considering the suspension or revocation of a license on the
25 grounds that a registered nurse has been convicted of a crime, the board, in
26 evaluating the rehabilitation of such person and his/her eligibility for a license
27 will consider the following criteria:

28 (1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or
offense(s).

(4) Whether the licensee has complied with any terms of parole,
probation, restitution or any other sanctions lawfully imposed against the
licensee.

(5) If applicable, evidence of expungement proceedings pursuant
to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COST RECOVERY

14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(March 21, 2011 Conviction for Driving While BAC is over .08 Percent on May 6, 2010)

15. Respondent has subjected his registered nurse license to disciplinary action under Code sections 490 and 2761, subdivision (f), in that he was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

a. On or about March 21, 2011, in a criminal proceeding entitled *The People of the State of California v. Erik Timothy Maland*, in Orange County Superior Court, Harbor Justice Center – Newport Beach Facility, case number 10HM06404, Respondent was convicted on his plea of guilty to violating Vehicle Code (VC) section 23152, subdivision (b), driving while having a blood alcohol content (BAC) of 0.08 percent or more, a misdemeanor. Respondent admitted and the court found true the allegation that his BAC was .20 percent or more, a sentencing enhancement pursuant to VC section 23538, subdivision (b)(2). Respondent also admitted and the court found true the allegation that pursuant to VC section 23626, he had been convicted previously of driving while having a BAC of 0.08 percent or more on March 10, 2004 in Rice County Superior Court, Minnesota, referenced in paragraph 18, below. A charge for violating VC section 23152, subdivision (a), DUI, with similar enhancements was dismissed pursuant to a plea bargain.

b. As a result of the conviction, on or about July 21, 2011, Respondent was sentenced to three years informal probation and ordered to serve 90 days at the Orange County Jail. Respondent was also ordered to attend a county-approved enhanced 18-month Multiple Offender Drinking Driver Program and pay \$1,844.00 in fines, fees, and penalty assessments.

///

c. The facts that led to the conviction are that on or about May 6, 2010, a security guard approached an officer from the Irvine Police Department (IPD) regarding Respondent who had just left a bar on Sand Canyon Road in Irvine, California. The security guard reported that Respondent was too intoxicated and had to be refused any more alcohol at the bar. Respondent refused the guard's offer to get a taxi for him and insisted on proceeding to his vehicle. The police officer observed Respondent stagger towards his car and drive his vehicle through the parking lot. As the officer attempted to get behind Respondent's vehicle, he quickly turned his car into a parking stall and turned off the engine. Respondent was parked too close to the next vehicle on the driver's side so the officer contacted him through the passenger side's window. As Respondent rolled down the window, the officer immediately noticed Respondent's eye lids appeared heavy and his movements slow and deliberate. The officer also noticed Respondent had difficulty moving, standing, and walking. Respondent smelled of alcohol and his speech was slow and slurred. Several field sobriety tests (FSTs) were conducted on Respondent, which he failed. At the IPD, Respondent consented to a blood test, which registered .32 percent BAC.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)

16. Respondent has subjected his registered nurse license to disciplinary action under Code section 2762, subdivision (b), in that on or about May 6, 2010, as described in paragraph 15, above, he used alcoholic beverages to an extent or in a manner that was potentially dangerous and injurious to himself and others when he operated a motor vehicle while impaired with a significantly high BAC.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Conviction of an Alcohol Related Criminal Offense)

17. Respondent has subjected his registered nurse license to disciplinary action under Code section 2762, subdivision (c), in that on or about March 21, 2011, as described in paragraph 15, above, he was convicted of a criminal offense involving the consumption of alcohol.

1

2

4

2

7.

1 Northfield Safety Center, Respondent requested another PBT, which registered .227 percent
2 BAC.

3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein
5 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

6 1. Revoking or suspending Registered Nurse License Number 772782, issued to
7 Erik Timothy Maland aka Erik Maland;

8 2. Ordering Erik Timothy Maland aka Erik Maland to pay the Board of Registered
9 Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to
10 Business and Professions Code section 125.3;

11 3. Taking such other and further action as deemed necessary and proper.
12
13
14

15 DATED: August 8, 2012

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
State of California
State of California
Complainant

16
17
18
19 SD2012703714
70594720.doc
20
21
22
23
24
25
26
27
28